

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CMBB LLC)
)
)
) Case No. 08 CV 1201
Plaintiff,)
)
)
v.) Judge Shadur
)
LOCKWOOD MANUFACTURING, INC.,)
JENNIFER M. BRYAN, and)
CAINCO EQUIPAMENTOS PARA)
PANIFICADO LTD.)
)
)
Defendants.)

MOTION TO ALTER OR AMEND JUDGMENT

Plaintiff CMBB LLC (“CMBB”), by its attorneys, hereby requests that this Court alter or amend its order dismissing this case pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. In support of its motion, Plaintiff states as follows:

1. On February 28, 2008, CMBB filed its Complaint against Defendants Lockwood Manufacturing, Inc. (“Lockwood”), Jennifer M. Bryan, and Cainco Equipamentos para Panificaco Ltd. (“Cainco”). The Complaint contains six counts alleging misappropriation of trade secrets, conversion, conspiracy to commit conversion, restitution and unjust enrichment, and replevin.
2. The Complaint attempted to establish this Court’s jurisdiction on diversity-of-citizenship grounds by alleging facts demonstrating that CMBB and Defendants are all citizens of different states. (Compl., ¶¶1-6).
3. On March 2, 2008, Defendants Lockwood and Cainco were served with the Complaint. Defendant Bryan was served with the Complaint on March 3, 2008.

4. On March 3, 2008, Defendants received this Court's Memorandum Order dismissing the Complaint *sua sponte* for want of the proper establishment of subject matter jurisdiction. Specifically, this Court held that CMBB failed to list the citizenship of each of its members and Bryan's state of citizenship.

5. In its Memorandum Order, this Court stated that if CMBB demonstrates that the requisite diversity is present and agrees to pay the amount of \$350, it would consider granting a Rule 59(e) motion. CMBB can demonstrate the requisite diversity and is willing to pay the \$350. As set forth in the attached proposed Amended Complaint (Exhibit A), the members of CMBB are all citizens of a different state than Defendant Bryan and Defendants Lockwood and Cainco are both citizens of different foreign states, thus establishing complete diversity for subject matter jurisdiction. 28 § 1332(a)(3).

6. CMBB requests that this Court alter or amend its order because it was a manifest error of law and fact to dismiss this case without providing CMBB leave to amend the Complaint to cure any jurisdictional deficiencies. The Seventh Circuit Court of Appeals has noted that *sua sponte* dismissals without prior notice or opportunity to be heard are hazardous. *See Shockley v. Jones*, 823 F.2d 1068, 1073 (7th Cir. 1987); *Joyce v. Joyce*, 975 F.2d 379, 386 (7th Cir. 1992). "Even when the dismissal is on jurisdictional grounds, unless the defect is clearly incurable a district court should grant the plaintiff leave to amend, allow the parties to argue the jurisdictional issue, or provide the plaintiff with the opportunity to discover the facts necessary to establish jurisdiction." *Shockley*, 823 F.2d at 1073. CMBB requests that this Court grant it leave to amend its Complaint because the jurisdictional defects are readily curable.

7. If CMBB is required to re-file this action, it will result in unnecessary delay in resolving this matter. In the interest of justice and equity, CMBB requests leave to file its proposed Amended Complaint.

WHEREFORE, Plaintiff CMBB LLC requests that this Court alter or amend its February 29, 2008 order by vacating the dismissal of this case and granting CMBB leave to amend its Complaint.

Respectfully submitted,

CMBB LLC

By: s/Staci Ketay Rotman - 06243241
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that she caused a true and correct copy of the foregoing **MOTION TO ALTER OR AMEND JUDGMENT** to be served on the following via UPS Worldwide on this 4th day of March, 2008:

Lockwood Manufacturing Inc
84 Easton Road
Brantford, Ontario N3P 1J5

Cainco Equipamentos LTD
Rua Joaquim Marques Figueiredo, 4-111
17034-290 – Bauru – SP – Brazil

s/Staci Ketay Rotman - 06243241
Staci Ketay Rotman

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that she caused a true and correct copy of the foregoing **MOTION TO ALTER OR AMEND JUDGMENT** to be served on the following via overnight mail Express on this 4th day of March, 2008:

Jennifer Bryan
Lockwood Manufacturing Inc
2917 Virginia Avenue
McHenry, IL 60050

s/Staci Ketay Rotman - 06243241
Staci Ketay Rotman